Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Amendment of the Commission's Rules	)	WT Docket No. 07-250
Governing Hearing Aid-Compatible Mobile	)	
Handsets	)	

To: The Commission

REPLY COMMENTS OF THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION

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REPLY COMMENTS OF THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Telecommunications Industry Association ("TIA")[1] hereby submits reply comments in the above-captioned proceeding,[2] as well as the Commission's request to address the effects of the Twenty-First Century Communications and Video Accessibility Act of 2010 (Accessibility Act) on hearing aid compatibility (HAC) regulations.[3]

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[1] TIA is the leading trade association for the information and communications technology ("ICT") industry, representing companies that manufacture or supply the products and services used in global communications across all technology platforms. TIA represents its members on the full range of public policy issues affecting the ICT industry and forges consensus on industry standards. Among their numerous lines of business, TIA member companies design, produce, and deploy a wide variety of devices with the goal of making technology accessible to all Americans.

[2] *In the Matter of Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, Policy Statement and Second Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 07-250, FCC 10-145 (rel. Aug. 5, 2010) (Policy Statement, Report and Order, or Further Notice, as applicable), *recon. pending*.

[3] *See* Twenty-First Century Communications and Video Accessibility Act of 2010, § 102, S.3304 and S.3878, Public Law Nos. 111-260 and 111-265 (2010) (Accessibility Act); Public Notice, *Wireless Telecommunications Bureau Requests that Comments in Hearing Aid Compatibility Proceeding Address Effects of New Legislation*, WT Docket No. 07-250, DA 10-1936 (WTB rel. Oct. 12, 2010).

I. THE RECORD DEMONSTRATES THAT THE MAJORITY OF COMMENTERS AGREE THAT HAC REGULATIONS SHOUND NOT APPLY WHEN VOICE CAPABILITY IS ENABLED BY A THIRD PARTY

In response to the Commission's request for "comment on how [HAC] rules should address circumstances where voice capability may be enabled on a handset by a party other than the manufacturer, particularly where adding the new voice capability may affect operating parameters of the handset such as the frequency range, modulation type, maximum output power, or other parameters specified in the Commission's rules,"[4] TIA would like to reiterate that manufacturers and service providers should not be liable for violations of Section 710 of the Act resulting from acts and omissions of third parties, including customers who download third party VoIP products onto their handsets.[5] As TIA stated in its initial comments, the Accessibility Act provides guidance on how to address this issue: the Act provides liability protection where an entity is acting as passive conduit of communications.[6] Many commenters in this matter agree that manufacturers and service providers should only be subject to Section 710 liability, including testing requirements, to the extent that a manufacturer affirmatively incorporates voice capability. TIA wishes to emphasize this broad agreement to reinforce that the Commission should not subject manufacturers or service providers to HAC regulations in the event that a

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[4] Further Notice at ¶ 82.

[5] *See* Comments of Telecommunications Industry Association, WT Docket No. 07-250 at 6 (filed Oct. 25, 2010) (TIA Comments).

[6] Accessibility Act § 2(a) ("[N]o person shall be liable for a violation of the requirements of [the Accessibility Act] (or the provisions of the Communications Act of 1934 that are amended or added [thereby]) with respect to … applications, services, advanced communications services, or equipment used to provide or access advanced communications services to the extent such person—(1) transmits, routes, or stores in intermediate or transient storage the communications made available through the provision of advanced communications services by a third party; or (2) provides an information location tool, such as a directory, index, reference, pointer, menu, guide, user interface, or hypertext link, through which an end user obtains access to such … applications, services, advanced communications services, or equipment used to provide or access advanced communications services.")

third party enables voice capability, and that it should furthermore demarcate liability associated with affirmative incorporation of applications at the time of HAC certification.

As noted above, numerous commenters agree that manufacturers and service providers should be subject to testing requirements for third party applications only to the extent that they affirmatively incorporate them into a device.[7] Furthermore, representatives of the hearing disabled community concur:

> …in cases where manufacturers or service providers have no control over software installed by consumers, they cannot be held accountable for the impact that software has on hearing aid compatibility…should a situation arise whereby a license agreement or contract has been entered into between either the manufacturer or the service provider and a software developer or producer, that manufacturer and/or service producer must ensure that the software does not negatively impact the handset's hearing aid compatibility.[8]

In addition, TIA notes that no commenters on the record have advocated that manufacturers or service providers that provide consumers with an open platform allowing the addition of third party VoIP applications, software or services to devices be considered liable under HAC absent concrete and affirmative steps towards these additions by the manufacturer or service provider.

The only question remaining before the Commission on this issue is how to properly delineate HAC liability for manufacturers and service providers who supply devices subject to HAC regulations. TIA believes that a manufacturer or service provider should be subject to

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[7] *See* Comments of Alliance for Telecommunications Industry Solutions, WT Docket No. 07-250 at 5 (filed Oct. 25, 2010) (ATIS Comments); *see also* Comments of AT&T, Inc., WT Docket No. 07-250 at 3-4 (filed Oct. 25, 2010) (AT&T Comments); *see also* Comments of CTIA – The Wireless Association, WT Docket No. 07-250 at 9-10 (filed Oct. 25, 2010) (CTIA Comments); *see also* Comments of Motorola, Inc., WT Docket No. 07-250 at 10 (filed Oct. 25, 2010) (Motorola Comments).

[8] Comments of Hearing Loss Association of America; Telecommunications for the Deaf and Hard of Hearing, Inc.; Association of Late-Deafened Adults, Inc.; Deaf & Hard of Hearing Consumer Advocacy Network; National Association of the Deaf; and Alexander Graham Bell Association for the Deaf and Hard of Hearing; WT Docket No. 07-250 at 5-6 (filed Oct. 25, 2010).

compliance with HAC regulatory and testing requirements only to the extent that it affirmatively incorporates such capabilities on the device at the time of HAC certification.[9] TIA believes that this is most logical point to limit liability, as the manufacturer or service provider cannot reasonably be expected to account for changes to the device related to HAC after this point, and because continuing to attach liability to the manufacturer would only serve to add inequitable liability that would disincentivize the innovation of HAC devices. For these reasons, the Commission should cut off any further HAC liability for manufacturers or service providers at the time of HAC certification.

II. TIA SUPPORTS THE USE OF GENERALLY APPLICABLE WAIVERS UNDER REASONABLE AND PRACTICAL CIRCUMANCES TO ENCOURAGE THE PURSUIT OF NEW TECHNOLOGIES

a. TIA members integrate hearing aid compatibility early in the design process and the Commission should implement policies that encourage this practice.

As noted by several commenters, many manufacturers and service providers already fully consider HAC in the early phases of design because not doing so could result in expensive retrofitting of equipment for later compliance,[10] it is required pursuant to Section 255(b) the Communications Act,[11] and it is consistent with the Commission's HAC Policy Statement.[12] Furthermore, as TIA noted in its initial comments, the Commission should implement its HAC Policy Statement consistent with Section 710 of the Communications Act, as recently amended by the Twenty-First Century Communications and Video Accessibility Act of 2010 (the

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[9] *See* TIA Comments at 6.

[10] *See* Motorola Comments at 8.

[11] *Id*.

[12] *See* Policy Statement.

"Accessibility Act").[13] If the Commission intends to promote the consideration of HAC as early as possible, it must do so in a fair and consistent manner that will not practically disincentivize the pursuit of new technologies. A key aspect of this consistency is the use of a waiver process that balances the realities in the technology development process and the existing efforts of manufacturers and service providers to consider HAC in the early phases of the design process with the needs of hearing disabled consumers.

The Commission can allow for HAC requirements to be waived under the Accessibility Act with respect to "new telephones, or telephones associated with a new technology or service upon a finding that compliance would be either technologically infeasible or would raise costs to such an extent that the telephones could not be successfully marketed."[14] TIA supports a waiver process that will incentivize HAC considerations as early and efficiently as possible. As TIA has noted in its initial comments, the Commission should adopt a waiver system in the alternative to the currently-used case-by-case waiver method, which, as TIA noted, does not provide enough lead time or certainty to companies seeking the waiver, and presents the danger of forcing companies to reveal proprietary business plans on the public record.[15] The Commission can improve this process by adopting an alternative approach that more effectively addresses these circumstances on a generally applicable basis.[16]

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[13] Comments of the Telecommunications Industry Association, WT Docket No. 07-250 at 2 (filed October 25, 2010) (TIA Comments).

[14] 47 U.S.C. § 710(b)(3).

[15] TIA Comments at 8-9.

[16] *Id.;* For example, RIM has "recommend[ed] that the Commission exempt a manufacturer's and carrier's handsets from the HAC rule in the following circumstances: If a manufacturer or service provider offers four or more handsets per air interface during a given calendar year (Year 1), in the next calendar year offers three or fewer handsets (Year 2), and in subsequent calendar years offers one or two of those remaining handsets (Years 3-
(continued on next page)

Based on Section 710(b)(3) of the Communications Act, TIA believes that manufacturers and service providers should be not be required to submit to over-extensive data submission requirements, and that the Commission should find a reasonable balance between the waiver burden and exhaustive expenses that may curtail HAC device innovation that might have otherwise occurred. One option for the Commission to accomplish this goal is to allow for HAC waivers for technologies that share key characteristics or components with other reasonably similar devices already granted a waiver under similar circumstances. This will reduce unnecessary compliance costs in the development process. A waiver standard that allows for principles of realistic market effects in regards to the obligations associated with HAC regulatory compliance and that takes into account existing incentives to consider HAC in the early design phases of new technologies will most effectively facilitate innovation in the development of new technologies. This is directly correlated to increased access to new technologies for hearing disabled populations.

b. The waiver standard proposed by the Hearing Industry Association is overly-burdensome and, if implemented by the Commission, could impede the development of new technologies

As noted above, TIA supports a generally applicable waiver process that will not only spur the development of new and innovative technologies but their time to market, while decreasing consumers' costs. Therefore, TIA strongly opposes the proposal of the Hearing Industry Association (HIA) that automatic waivers would defeat Congressional intent in the Accessibility Act.[17] HIA proposes that the Commission require that manufacturers demonstrate

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onward), then during Years 3-onward the HAC rules would not apply to those handsets." RIM *Ex Parte*, Attachment at 2.

[17] Comments of the Hearing Industry Association, WT Docket No. 07-250, at 5 (HIA Comments).

"that a *bona fide* attempt was made during the design phase to ensure HAC, complete with engineering details" after the initial design phase in order to gain exemption from HAC rules.[18]

While TIA supports the notion that HAC should be addressed from the early stages of product design, and TIA members, in fact, currently incorporate this practice.[19] The HIA proposal does not take into account manufacturers' and service providers' aforementioned incentives to consider HAC in the early stages of design. Further, the proposal would greatly increase the burden associated with compliance for manufacturers and service providers due to (1) the apparent unnecessarily high information requirements proposed[20] and (2) costs associated with unnecessary testing and time delays before a waiver can be applied for, both damaging the business case for develop new, innovative technologies that are accessible for hearing disabled individuals.

The HIA proposal could result in requiring manufacturers and service providers to taking overly burdensome steps to demonstrate that a new device should be exempt from HAC rules in appropriate situations. It is certain that as new technologies are developed, certain characteristics or components of devices will consistently present increased burdens across certain development processes of new technologies, and requiring a manufacturer or service provider to justify a waiver for the same technology or facet of a technology duplicitously is a waste of the company and the Commission's time and resources. TIA submits that requiring an intense amount of

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[18] *Id*.

[19] *See* TIA Comments at 2; *see also* Motorola Comments at 7-8.

[20] *See* HIA Comments at 5.

documentation showing compliance attempts "complete with engineering details"[21] under every circumstance will unreasonably add to administrative costs and will undercut the business case for innovation of HAC devices.

Aside from the amount of information the HIA proposal seeks to require to satisfy the waiver burden, requiring a manufacturer or service provider to wait until after a "*bona fide*" attempt is made in the design phase without exception also ignores pass-through cost realities. Should the HIA proposal be adopted, manufacturers and service providers could be required to undertake technology development processes for devices they know to be legally exempt at an earlier phase solely for the purpose of meeting an unreasonably high administrative burden. The adoption of this proposed rule by HIA would therefore add unjustifiable costs to the development costs incurred solely by manufacturers, and would result in a ripple effect of these costs to all affected parties – most importantly, hearing disabled consumers.

c. TIA urges the Commission to encourage the hearing aid industry to work more closely with manufacturers and service providers to ensure increased access to voice communications.

TIA urges the Commission to encourage the hearing aid industry to work more closely with the manufacturers and service providers to ensure that HAC occurs in as efficient and inexpensive a manner as possible, and notes the already-stated inflated burden that manufacturers and service providers bear in making new technologies compatible with hearing aids as compared with those of the hearing aid industry.[22] Consumers who need HAC devices will benefit most if all industry sectors, including hearing aid manufacturers, consistently work

[21] HIA Comments at 5.

[22] *See* CTIA Comments at 13.

together to achieve compliance, instead of placing the entire burden on the device manufacturers and service providers. Instead of adopting the HIA proposal, TIA supports the Commission requiring feasible amounts of information in waiver applications as early as reasonably possible in the design process, keeping in mind the effect the HAC waiver burden process will have on the business case for HAC devices.

III. TIA SUPPORTS THE EXPANSION OF HEARING AID COMPATIBILITY RULES TO NEW TECHNOLOGIES, GUIDED BY THE POLICY STATEMENT AND CONSISTENT WITH SECTION 710 OF THE ACT

TIA and other commenters submit the scope of HAC rules in the recently enacted Accessibility Act strikes the appropriate balance to ensure that new voice technologies are available to all consumers without unintentional consequence.[23] Section 710(b)(1)(C) of the Act, as added by the Accessibility Act, now applies HAC obligations to "[a]ll customer premises equipment used with advanced communications services[24] that is designed to provide 2-way voice communication via a built-in speaker intended to be held to the ear in a manner functionally equivalent to a telephone, subject to" important policy considerations under new section 710(e) of the Act. These considerations include the "use [of] appropriate timetables or

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[23] *See* TIA Comments at 4; *see also* Motorola Comments at 4; *see also* ATIS Comments at 4; *see also* AT&T Comments at 2.

[24] The term "advanced communications services" is defined to include interconnected VoIP services as defined at section 9.3 of the Commission's rules, 47 C.F.R. § 9.3, as well as non-interconnected VoIP service, which are defined as a service that "(i) enables real-time voice communications that originate from or terminate to the user's location using Internet protocol or any successor protocol; and (ii) requires Internet protocol compatible customer premises equipment." 47 U.S.C. § 153(25), (36). This definition applies to wireline and wireless services alike, but as the Commission notes in the *Further Notice*, this proceeding "is limited to wireless handsets consistent with the scope of ANSI Standard C63.19" and "cordless telephones, including those commonly used in wireless PBXs, that are covered under Electronics Industries Association Recommended Standard RS-504 would remain subject to Section 68.4 of the Commission's rules and would not be affected by this proposal." *Further Notice* at ¶ 82 n.173. TIA supports the Commission's determination to leave the Part 68 rules unaffected by rules that may be adopted in this proceeding, which is unaffected by the Accessibility Act.

benchmarks to the extent necessary (1) due to technical feasibility, or (2) to ensure the marketability or availability of new technologies to users."[25] These new statutory criteria must govern the Commission's approach here and explicitly states the HAC rules only apply to devices intended to be held to the ear.

CONCLUSION

For the foregoing reasons, TIA urges the Commission to take into consideration in this proceeding.

Respectfully submitted,

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[25] *See* 47 U.S.C. § 610(b)(2)(C).